

APPENDIX D

COMPLAINTS PROCEDURE

1. General:

- a. Reception, expeditious processing, impartial determination of facts, and just resolution of all complaints, including discrimination complaints based on race, color, religion, national origin, or gender, are the responsibility of commanders at all levels.
- b. Commanders are encouraged to utilize the assistance and recommendations of EOA's in their determination of the presence or absence of discrimination.
- c. In all cases, military personnel will be afforded free access to commanders, Inspector General, EO staff personnel, Staff Judge Advocates, Staff Chaplains, and Staff Provost Marshals.
- d. It is the responsibility of the commander receiving an EO complaint to ensure that the complaint is properly recorded and forwarded to the DIVARTY EOA, and a brief summary of the complaint to the 4ID Commanding General, within 72 hours of receiving the complaint (formal complaints only). Action taken to resolve the complaint must be recorded and forwarded to the brigade EOA.
- e. Any complaint that cannot be resolved informally must be directed to the DIVARTY EOA.
- f. All Commanders will post, on unit bulletin boards, procedures to file a complaint. Members of their command should be aware of the procedures available to them when seeking redress on a complaint, including redress procedures when the complaint is against a member of the chain of command.
- g. All complaints must be seriously considered, impartially inquired into, and justly resolved, whether that is accomplished by correcting a misperception on the part of the complainant, taking appropriate action against a person or situation at fault in substantiated complaint or an appropriate combination of both.
- h. All commanders must, in all cases, protect the complainant for registering a complaint. However, disciplinary or other adverse action may be appropriate against a complainant who knowingly and intentionally makes a false allegation.
- i. EO complaints by, or against, Department of the Army civilians, which cannot be informally resolved, will be received, processed, and resolved through the Equal Employment Opportunity Office, III Corps, Fort Hood, Texas.
- j. The DIVARTY EOA will be expeditiously informed on all matters concerning incidents or complaints of a volatile nature, which have the potential of increasing racial tensions outside the unit or area of occurrence.

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2. Procedures for processing complaints of discrimination.

- a. Informal Complaint.

(1) An informal complaint is any complaint that a soldier or family member does not wish to file in writing. Attempts should be made to solve problems at the lowest possible level. Informal complaints may be resolved directly by the individual, another unit member, the commander or other person in the complainant's chain of command. An informal complaint is not subject to time suspension's nor is it reportable.

(2) Although the processing of Equal Opportunity complaints through the chain of command is strongly encouraged, it will not serve as the only channel available to soldiers and family members. Should the complainant feel uncomfortable in filing a complaint with his/her unit chain of command, a number of alternative agencies exist through which the issues may be identified for resolution. Commanders will not preclude soldiers or family members from using these channels (in accordance with the procedures inherent/established by these agencies):

- (a) Someone in a higher echelon of the chain of command
- (b) DIVARTY Equal Opportunity Advisor
- (c) Inspector General
- (d) Chaplain
- (e) Provost Marshal/Criminal Investigator
- (f) Medical agency personnel
- (g) Staff Judge Advocate
- (h) Chief, Community Home finding Referral and Relocation Services Office (CHRRS)/Housing Referral Officer.

(3) In some informal complaints, the person or agency receiving the complaint may be able to resolve the issue while maintaining the confidentiality of the complainant, as in the case of the chaplain or lawyer. While maintenance of confidentiality should be attempted, it will neither be guaranteed nor promised to the complainant by agencies other than the chaplain or a lawyer.

(4) The informal complaint is no less important than a formal complaint, and should be addressed with a sense of urgency and a sincere intent to attain resolution. Commanders are encouraged, at all levels, to use all resources (i.e. commander's inquiry, 15-6 investigation) to bring resolution to complaints.

b. Formal Complaint.

(1) A formal complaint is one that results from an inability to resolve an issue informally or from an act or acts that may appear to warrant an official investigation. Formal complaints require specific actions, in a timely manner, and an audit trail of the actions taken.

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(2) A soldier or family member files a formal complaint using a DA Form 7279-R (Equal Opportunity Complaint Form). This form is available electronically or can be reproduced locally on 8 ½ by 11-inch paper. A copy for reproduction is included in Appendix G.

(3) In Part I of DA Form 7279-R, the complainant will identify the alleged concern, provide the names of the parties involved and witnesses, describe the incident(s)/behavior(s), and specify the date(s) of the occurrence(s). The complainant will also state the equal opportunity basis of the complaint (e.g., discrimination based on gender, race, color, national origin, religious affiliation, or sexual harassment).

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(4) Soldiers and family members have 60 calendar days from the date of the alleged incident in which to file a formal complaint. This time limit is established to set reasonable parameters for the inquiry or investigation and resolution of complaints, to include ensuring the availability of witnesses, accurate recollection of events, and timely remedial action. If a complaint is received after 60 calendar days, the commander may conduct an investigation into the allegations. In deciding whether to conduct an investigation, the commander should consider the reason for the delay, the availability of witnesses, and whether a full and fair inquiry or investigation can be conducted.

(5) If during the course of an inquiry or investigation the receiving agency or commander identifies criminal activity, the complaint will be immediately referred to the proper agency (higher commander, Provost Marshall, or CID) for investigation.

(6) Complaints of sexual assault and rape will immediately be referred to medical agencies for the procurement of forensic evidence and for assistance in the treatment and counseling of the victim.

(7) Allegations of discrimination in housing, both on and off-post will be immediately referred to the housing division for processing under the provisions of AR 210-50, Housing Management.

(8) The appropriate commander is that commander at the lowest echelon of command at which the complainant may be assured of receiving a thorough, expeditious, and unbiased investigation of the allegations. Depending on the various aspects of the complaint and personalities involved, that lowest level commander may not be the immediate company or even battalion level commander of the complainant.

c. Actions of the commander/investigating officer.

(1) Upon receipt of a complaint, the commander will ensure that the soldier or family member has been sworn to the complaint. For equal opportunity complaints, the commander is authorized to administer oaths on DA Form 7279-R. The commander will report the particulars of the complaint in writing, through the chain of command, to the Commanding General, 4ID, within 72 hours of receiving the complaint.

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(2) The commander will either personally conduct an inquiry to ascertain the validity of the complaint or assign or request assignment of an AR 15-6 Officer to investigate the allegations. The EOA can assist the commander in conducting the commander's inquiry, but will not be used in lieu of the commander when commanding this inquiry.

(3) A commander and any investigating officers will obtain the assistance of the organization's assigned (DEOMI-trained) EOA to assess the complaint and/or the process of the inquiry or investigation. An EOA's skills in complaint handling and conflict resolution and training in the subtleties of discrimination and sexual harassment enable him or her to advise the commander or any investigating officer in this complex area.

(4) The commander will review the facts as determined by his/her commander's inquiry or the results of the AR 15-6 investigation and take appropriate action.

d. Timeliness of action. Rapid resolution of EO complaints is in the best interest of both the person filing the complaint and of the command. After receipt of the complaint, the commander has 14 calendar days (or three weekend drill periods [90-120 calendar days] for Reserve Components) in which to

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conduct a complete inquiry/investigation or to refer the case to a higher echelon commander. If, due to extenuating circumstances, it becomes impossible to conduct a complete investigation within the 14 calendar days allowed (or three weekend drill periods [90-120 calendar days] for Reserve Components), the commander may obtain an appropriate extension (not to exceed thirty calendar day or two weekend drill periods [60 calendar days] after the initial 14 day suspense) in writing from the next higher echelon commander. Upon receipt of an extension, the commander will inform the complainant of the extension, its duration, and the reasons for which it was requested. Any additional extensions must be approved in writing by the first general officer in the chain of command. Failure to adhere to prescribed timeliness will result in automatic referral of the complaint to the next higher echelon commander for investigation and resolution.

e. Feedback to the complainant/alleged offender. The complainant and alleged offender will receive written feedback from the commander on DA Form 7279-R, Parts II and III, within 14 calendar days (or three weekend drill periods [90 calendar days] for Reserve components) after acknowledgement of the complaint. Written feedback should incorporate and annotate any verbal update provided to the complainant. Written feedback may stat that appropriate action is being considered but will not delineate specific actions. Whenever possible, the commander should meet with the complainant to present orally previous written feedback and discuss the findings of the inquiry/investigation and actions taken to resolve the issue.

f. Actions upon a substantiated complaint. A substantiated EO discrimination complaint is a complaint that, after the completion of an inquiry or investigation, provides evidence to indicate that the complainant was more likely than not treated differently because of his or her race, national origin, gender, or religion and that corrective action must be taken.

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(1) Administrative action. Offenders will, as a minimum, undergo counseling by a member of the chain of command, preferably the Commander. Commanders have the full range of administrative actions available to them to deal with offenders of Army policy on equal opportunity (including the prevention/eradication of sexual harassment), to include discharge from the Service, bar to reenlistment, relief for cause, administrative reduction, admonition, reprimand, administrative withholding of privileges, and rehabilitative transfer to another unit. Commanders should determine whether the victim desires to be transferred to another unit, but should not subject the complainant to "double victimization" by requiring that he or she be transferred to another unit while leaving the offender in the unit. With regards to evaluation reports, adverse performance evaluations will include specific comments concerning non-support of EO/EEO programs, as prescribed by AR 600-20, Chapters 6 and 7, and are directed to be included in the performance evaluations.

(2) UCMJ. Violators of Army policies on equal opportunity and the prevention/eradication of sexual harassment, whose conduct violates a punitive article of the Uniform Code of Military Justice (UCMJ), may be charged and prosecuted. Nonjudicial punishments (e.g. Article 15) will be posted in the unit area in accordance with AR 27-10. Courts-martial convictions will be published in installation newspapers and posted in the unit area where appropriate.

(3) Written and oral feedback to the complainant and offender will identify actions being taken by the chain of command. Should administrative or UCMJ action be taken against the offender, the complainant will only be briefed that appropriate action is being taken. Other actions may also be annotated.

g. Actions upon an unsubstantiated complaint.

(1) There are two types of unsubstantiated complaints—complaints for which there is no corroboration (NC) and those for which the corroborating evidence is insufficient to substantiate the allegations (IC). In both situations, the commander should determine whether the allegations, though unsubstantiated, may be indicative of problems in the unit that require resolution through EO initiatives or other leadership actions. Should the complaint be found to be unsubstantiated, the commander will notify the complainant and alleged offender, in writing (DA Form 7279-R, Part II) and provide the complainant with a copy of the results of the investigation. The complainant will sign and date the form to acknowledge receiving this information. The alleged offender will also be provided a copy of the results of the investigation, and will sign and date the form. This acknowledgement does not necessarily signify the complainant's agreement with the actions taken.

(2) Commanders should be aware that an unsubstantiated finding might not necessarily resolve the complainant's concerns. Additionally, the complainant and other members of the command may retain the perception of unfair treatment. Commanders should take action to resolve these issues. The brigade EOA will be available to the commander to provide assistance and develop techniques and recommend courses of action to resolve these concerns.

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h. Appeals process. Should the complaint be found to be unresolved in the mind of the complainant, the complainant has the right to appeal to the next higher commander within his or her chain of command. The complainant must do so in writing on the DA Form 7279-R, Part IV, within 7 calendar days (at the next drill period [30 days] for Reserve Components) following notification of the results of the investigation and acknowledgement of the actions of the command to resolve the complaint or issue. The alleged offender also has 7 calendar days to appeal the results of the investigation, and will follow the same process described above.

i. Legal Review. Prior to taking action against an offender, the commander will consult with the servicing Judge Advocate. Findings of investigations of equal opportunity complaints will also receive legal review under the provisions of AR 15-6 and AR 27-10.

j. Final decision authority. Complaints that are not resolved at brigade level may be appealed to the General Court Martial Convening Authority of the unit's MACOM. Decisions at MACOM level are final.

k. Protection against reprisal.

(1) Department of the Army Personnel are prohibited from taking any action that discourages a soldier or family member from filing a complaint or seeking assistance when resolving EO matters. Personnel are also prohibited from taking any disciplinary or adverse action against a soldier for filing a complaint, seeking assistance, or cooperating with an investigating official in an equal opportunity investigation. This does not preclude taking action against individuals who intentionally file complaints that they know to be false or baseless.

(2) It is the responsibility of the chain of command to ensure that the complainant is protected from reprisal or retaliation for filing an equal opportunity complaint (including complaints of sexual harassment). Should soldiers or family members be threatened with such an act, or should an act of reprisal or retaliation occur, the circumstances of that should be immediately reported to the chain of

command, or to a local Inspector General. Allegations of threats or acts of reprisal or retaliation will be referred to the battalion or higher commander for appointment of an AR 15-6 investigating officer or referred to the Inspector General.

1. Follow-up. Roughly 30-45 calendar days (3 to 4 weekend drill periods [90-120 calendar days] for Reserve components) following the final decision on the complaint, the brigade EOA will conduct an assessment to determine the effectiveness of the corrective action(s) taken and to detect and deter the incidence of reprisal. The EOA will provide the written results of the assessment and any recommendations to the commander using DA Form 7279-1-R, "Equal Opportunity Complaint Resolution Assessment." This form is available electronically. The form can be locally reproduced on 8 1/2 by 11-inch paper. (A copy for reproduction is included in Appendix G) A copy of this completed report will be kept in the complaint file with the DA Form 7279-R and previous results of the investigation.

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m. Actions against soldiers submitting false complaints. Soldiers who knowingly submit a false equal opportunity complaint may be punished under the UCMJ. Commanders will consider punishment under the UCMJ after review of the statement and all circumstances.

n. The Equal Opportunity Complaints Process flow chart located in Appendix G will be used as a quick reference and posted in the work place as a means of educating soldiers about the equal opportunity complaint process.